

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 ROGER A STEWART,

11 Plaintiff,

12 v.

13 CHASE HOME FINANCIAL, LLC;
14 NORTHWEST TRUST SERVICES, LLC,

15 Defendants.

16 No. 3:10-cv-5148RBL

17 ORDER ON VARIOUS MOTIONS
18 [Dkt. #s 17, 24, 35, 40, 41, 42, 44]

19 This matter is before the Court on the following Motions: Defendant Chase's Motion to
20 Dismiss [Dkt. #17]; Defendant Northwest's Motion to Dismiss [Dkt. #24]; and Plaintiff's
21 Motions to Compel [Dkt. #35]; for a Temporary Restraining Order [Dkt. #40]; and to Stay all
22 proceedings [Dkt. #41]; and on the Defendants' Motions to Strike certain of the Plaintiff's
23 Pleadings, for a Protective Order, to Stay Discovery pending a ruling on the Motions to Dismiss,
24 and to Set a Briefing Schedule [Dkt. #s 42 and 44].

25 The case involves the Defendants' foreclosure on Plaintiff's home in March of this year.
26 On March 4, 2010, Plaintiff filed this action, asserting "Violation of federal laws, TILA, RESPA,
27 RICO STATUES (*sic*)."¹ Plaintiff claims the Defendants are attempting to collect a fraudulent
28 debt and pursuing fraudulent foreclosure proceedings. [Dkt. #1]. The record does not reflect
that Plaintiff served¹ either his initial complaint or his amended complaint [Dkt. #6] on either

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1 defendant. The previously scheduled foreclosure sale occurred the following day, March 5,
 2 2010. Plaintiff filed an Amended complaint on June 29, 2010, but there is no indication that it
 3 was served. No summons is attached to either of the complaints. [Dkt. #6]

4 As an initial matter, Defendants ask the Court to Strike Plaintiff's filings under Rule
 5 12(f), and to take other steps to avoid time consuming, wasteful and otherwise useless litigation
 6 pending the resolution of their Motions to Dismiss. While these Motions appear to be well taken,
 7 given the resolution of Plaintiff's Motions, and the Defendants' Motions, those requests [Dkt. #s
 8 42 and 44] are DENIED.

9 In response to Defendants' Motions to Dismiss, Plaintiff seeks to Compel defense
 10 counsel to verify whether they are representing the Holder in Due Course and whether they are
 11 acting as debt collectors. There is no precedent for such a Motion. The Federal Rules of Civil
 12 Procedure set forth the proper way to obtain information about one's adversary's legal positions.
 13 Furthermore, Defendants' counsel are not, in this action, attempting to foreclose or otherwise act
 14 with respect to a debt, at all; they are defending their respective clients against the claims
 15 asserted against them by Plaintiff. The Plaintiffs' Motion to Compel [Dkt. #35] is DENIED.

16 Plaintiff also seeks an emergency Temporary Restraining Order [Dkt. #40]. He seeks to
 17 enjoin the Defendants from selling his (former) property pending a trial in this matter. He
 18 claims, among other things, that the Defendants are a terrorist cell, and that they have engaged in
 19 "all sorts of fraud."

20 A plaintiff seeking a preliminary injunction "must establish that he is likely to succeed on
 21 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
 22 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v.*
 23 *Natural Res. Def. Council, Inc.*, ___U.S.___, 129 S.Ct. 365, 374 (2008) (internal citations omitted).
 24 "A preliminary injunction is an extraordinary remedy never awarded as of right." *Id.* at 376.
 25 The standard for granting a preliminary injunction balances a plaintiff's likelihood of success on
 26 the merits against the hardship to the parties. The greater the relative hardship to the moving
 27 party, the less probability of success on the merits must be shown. *Clear Channel Outdoor Inc.*
 28 *v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003). "These two formulations represent

1 two points on a sliding scale in which the required degree of irreparable harm increases as the
 2 probability of success decreases.” *Arcamuzi v. Cont'l Airlines, Inc.*, 819 F.2d 935, 937 (9th Cir.
 3 1987) (internal citations omitted). However, all four factors are considered together in
 4 evaluating whether a preliminary injunction is appropriate. The standard for issuing a temporary
 5 restraining order is the same as the standard for issuing a preliminary injunction. *Cal. Indep. Sys.
 6 Operator Corp. v. Reliant Energy Servs. Inc.*, 181 F.Supp.2d 1111, 1126 (E.D.Cal. 2001).

7 Plaintiff claims he seeks to maintain the status quo. He alleges, without demonstrating,
 8 that his rights are “clear” and that he is likely to succeed on the merits of his claims against the
 9 Defendants.

10 Plaintiff argues that he is at risk of irrevocable harm, claiming that the (further) sale of
 11 the property cannot be addressed by money damages. He claims that Defendants cannot be
 12 harmed by a TRO, because they have already been “paid in full numerous times,” through the
 13 sale of the Note, through “the Bailout” and “TARP,” and insurance proceeds. Finally, he argues
 14 that an injunction would be in the public interest, because Defendants have engaged in acts of
 15 war and terrorism against the United States.

16 Plaintiff’s claims are nonsensical, unsupportable, and insufficient in any event. The
 17 Motion for a TRO [Dkt. # 40] is DENIED. The Plaintiff’s Motion to Stay [Dkt. #41] is similarly
 18 without merit and is DENIED.

19 Defendants’ Request for Judicial Notice of the fact of the sale of Plaintiff’s property in
 20 March of this year is GRANTED.

21 Defendants seek dismissal of Plaintiff’s claims against them under Rule 12(b)(6). They
 22 argue that the complaint was never effectively served upon them, and that the bulk of plaintiff’s
 23 claims are time barred and otherwise fail to state a claim upon which relief may be granted.

24 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
 25 theory or absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.
 26 Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). Review is limited to the content of the
 27 complaint [and properly incorporated documents], and all allegations of material fact must be
 28 taken as true, and construed in the light most favorable to the non-moving party. *Fed’n of*

1 *African Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir. 1996). Under *Bell*
 2 *Atlantic Corp. v. Twombly*, a litigant cannot simply recite the elements of a cause of action to
 3 avoid dismissal under this Rule. He must instead “provide the grounds of his entitlement to
 4 relief, which requires more than labels and conclusions.” 127 S.Ct. 1955, 1964-65 (2007). The
 5 litigant must plead a claim that moves “across the line from conceivable to plausible.” *Id.* at
 6 1974.

7 Plaintiff filed this matter on March 4, 2010. The record does not reflect any proof of
 8 service, and Defendants claim they have not been served. Plaintiff claims that he served his
 9 complaint by mail, and he claims, erroneously, that that is effective service. See Fed. R. Civ. P.
 10 4. Plaintiff has not served his Complaint (or any summons) in the time required by Rule 4(m);
 11 see also Rule 12(b)(5). While he is pro se, and his pleadings are to be construed liberally in his
 12 favor, Mr. Stewart is not free to ignore the substantive requirements of service of process. The
 13 Defendants are entitled to dismissal under the rules where effective, legal service of process has
 14 not been accomplished in a timely manner.

15 It is also apparent that at least the Plaintiff’s TILA and RESPA claims are barred by the
 16 applicable one year limitations period, as those claims accrued (if at all) in 2005 and this matter
 17 was not filed until 2010. Plaintiff’s remaining claims are also facially deficient, for the reasons
 18 outlined in the defendants’ Motions. Given the resolution of the Motions on the service issue,
 19 however, it is not necessary to outline those failings in detail.

20 The Defendants’ Motions to Dismiss [Dkt. #s 17 and 24] are GRANTED and Plaintiff’s
 21 Claims against them are DISMISSED. Because the Plaintiff cannot plead facts consistent with
 22 those alleged in his prior complaints that would state a cause of action against these Defendants,
 23 the dismissal is WITH PREJUDICE.

24 **IT IS SO ORDERED.**

25 Dated this 15th day of October, 2010.

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 27 _____
 28 RONALD B. LEIGHTON
 29 UNITED STATES DISTRICT JUDGE